

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
-vs-)	
The Peoples Gas Light and Coke)	
Company)	10-0716
)	
Citation for alleged violations of)	
federal rules incorporated by the)	
Illinois Commerce Commission)	
regarding testing)	

**REPLY OF THE PEOPLES GAS LIGHT AND COKE COMPANY
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondent, The Peoples Gas Light and Coke Company ("Peoples Gas"), pursuant to section 200.190 of the Illinois Commerce Commission's Rules of Practice (83 Ill. Admin. Code § 200.190) and the schedule set by the Administrative Law Judge, files this reply in support of its Motion for Partial Summary Judgment. Peoples Gas states:

1. In its response, Staff failed to rebut Peoples Gas' legal argument that section 192.515(a) is not applicable as a matter of law.
2. Staff mischaracterized the legal standard for the interpretation of safety-related regulations. The standard rules of statutory and regulatory construction apply. Illinois courts have consistently held that even when construing a safety-related statute, the court must conduct a standard statutory construction analysis and cannot stray from a reasonable interpretation of the purpose and language chosen by the Legislature. *Kaplan v. Tabb Assoc., Inc.*, 276 Ill. App. 3d 320, 323 (4th Dist. 1995); *Dodson v. Shaw*, 113 Ill. App. 3d 1063, 1067 (5th Dist. 1983).

3. Staff incorrectly relies on *Kreke v. Caldwell Eng'g Co.*, 105 Ill. App. 3d 213 (4th Dist. 1982), for the proposition that safety-related statutes are to be construed broadly. In *Kreke*, the Appellate Court held that “[a]s a safety statute, this court is directed to adopt a liberal construction of [the construction injuries act (the “CIA”) (Ill. Rev. Stat. 1971, ch. 121, pt. 314.1 *et seq.*)] in order to effectuate the purposes of the statute and to afford broad protection to those the statute was designed to protect.” *Kreke*, 105 Ill. App. 3d at 221. However, in performing its analysis, the Appellate Court followed the well settled rule of statutory construction, holding that “[q]uestions concerning application of the Act must be decided upon the language of the Act, where it is clear and unequivocal.” *Kreke*, 105 Ill. App. 3d at 223. The regulation at issue in this proceeding – section 192.515(a) – is clear and unequivocal.

4. Staff also incorrectly asserts that federal courts apply a similar liberal construction rule without first performing a standard statutory construction. Staff relies on *Donovan v. Peter Zimmer America, Inc.*, 557 F. Supp. 642 (D.S.C. 1982), for the proposition that ““safety legislation is to be liberally construed to effectuate the congressional purpose.”” (internal citations omitted). The District Court did not interpret a safety statute, but rather examined the broad purpose and scope of the Occupational Safety and Health Act relative to retaliatory discharge. In a more recent decision by the United States District Court for the Southern District of Illinois, in which the District Court interpreted the Federal Gas Pipeline Safety Act, the District Court held that “when interpreting a statute, a court ‘must first look to the language of the statute and assume that its plain meaning accurately expresses the legislative purpose.’” *Petco Petroleum*

Corp. v. Natural Gas Pipeline Co. of America, 410 F. Supp. 2d 715 (S.D. Ill. 2006)

(internal citations omitted).

5. Thus, the well-settled rules of statutory and regulatory construction apply, namely, the court must give effect to the plain meaning of the regulation at issue.

Regardless whether section 192.515(a) is interpreted narrowly or broadly, summary judgment must be granted. It is clear and unequivocal that section 192.515(a) applies only to work performed under subpart J. Because Peoples Gas did not perform work under subpart J at the time of the occurrence, section 192.515(a) does not apply.

6. At the time of the incident, it is *undisputed* that Peoples Gas was uprating an existing segment of steel main from low pressure to medium pressure. The main was not being relocated or replaced. Staff admitted this fact in its Report which is part of the record of this proceeding. In paragraph 6 of the response, however, Staff referred to the work Peoples Gas performed on March 3, 2010, as the “so-called ‘uprating’ procedures.” Staff’s assertion is incorrect, as there is no dispute that Peoples Gas was involved in an uprating project at the time of the incident. Uprating is governed under subpart K of the regulations. Pursuant to section 192.553 (which is part of subpart K), the operator must pressure test the existing segment of main as part of the uprating procedure before returning the main to service at the higher pressure. Thus, on March 3, 2010, Peoples Gas pressure tested the segment of main pursuant to the uprating requirements in subpart K.

7. Recognizing the weakness of its legal position as to the applicability of section 192.515(a), Staff has changed its theory and asserts in paragraphs 21 and 22 of its response that Peoples Gas did not perform the pressure test pursuant to the uprating

requirements in subpart K. Rather, Staff now contends that Peoples Gas performed pressure testing pursuant to section 192.619 of the regulations in order to establish the maximum allowable operating pressure (“MAOP”) of the pipeline. Staff’s assertion is incorrect. Peoples Gas was pressure testing the segment of main at issue pursuant to the uprating requirements, so that it could operate that segment at medium pressure instead of low pressure. In any event, section 192.619 is *not* contained in subpart J; it is in subpart L. Staff omitted this fact in its response.

8. Therefore, regardless whether Peoples Gas was pressure testing the segment of main pursuant to the uprating procedures in subpart K, or was pressure testing pursuant to the MAOP procedures in subpart L, section 192.515(a) is not applicable. As stated, section 192.515(a) is expressly limited to work performed under subpart J.

9. In paragraph 23 of its response, Staff suggests that it is a factual question whether Peoples Gas was performing testing within the meaning of subpart J. There is no factual question. Subpart J is limited to certain testing performed on either a new segment of pipeline, or a segment of pipeline that is being relocated or replaced. It is *undisputed* that on March 3, 2010, Peoples Gas did not perform any testing on a new pipeline segment or a pipeline segment that was being relocated or replaced. Rather, Peoples Gas was pressure testing an existing segment of main pursuant to the uprating requirements in subpart K. Alternatively, Staff suggests that Peoples Gas was pressure testing pursuant to the MAOP requirements in subpart L. Section 192.515(a) does not apply to testing done under either subpart K or subpart L. Section 192.515(a) only applies to subpart J, but Peoples Gas did not perform work under subpart J.

10. Staff's assertion that Peoples Gas is taking a "hyper-legalist view" of the regulations is incorrect. The plain language of the regulations is crystal clear. Section 192.515(a) expressly provides that it only applies to testing performed under subpart J. It does not apply to testing performed under any other subpart, including subpart K or L.

11. Staff is improperly attempting to expand the rules beyond their plain language and to conflate all of the subparts. Staff's position is inconsistent with principles of regulatory construction.

12. For the reasons stated in Peoples Gas' Motion for Partial Summary Judgment and this reply, section 192.515(a) is not applicable to the work that Peoples Gas performed on March 3, 2010.

WHEREFORE, The Peoples Gas Light and Coke Company respectfully requests that partial summary judgment be entered in its favor.

Respectfully submitted,
The Peoples Gas Light and Coke Company

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Dated at Chicago, Illinois
This 7th day of March, 2011

Attorneys for
The Peoples Gas Light and Coke Company

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Service List

PLEASE TAKE NOTICE that on March 7, 2011, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Motion for Partial Summary Judgment of The Peoples Gas Light and Coke Company, a copy of which is hereby served upon you by e-mail, messenger, overnight courier and/or United States Mail on March 7, 2011.

/s/ MARY KLYASHEFF
Mary Klyasheff
An Attorney for
The Peoples Gas Light
and Coke Company